

31 March 1954

Mr. Roger W. Jones
Assistant Director for Legislative Reference
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Jones:

Since the passage of the Performance Rating Act of 1950, the Central Intelligence Agency has sought to develop means whereby it could properly comply with all of its provisions while still protecting the essential security of the Agency. Over a period of years we have discussed this problem with the Civil Service Commission, the Office of the Comptroller General and the Bureau of the Budget, in an attempt to find a satisfactory solution to our problem without seeking specific exemption from the statute itself. The officials with whom we have discussed this matter have been extremely cooperative and helpful but, with all their assistance, a conflict still exists between our security requirements and certain provisions of the Act.

Section 4 of the Performance Rating Act of 1950 provides that no employee of any department shall be given a performance rating, and no such rating shall be used as a basis for any action, except under a performance rating plan approved by the Civil Service Commission as conforming with the requirements of the Act. Furthermore, Section 8 provides that the Civil Service Commission shall inspect the administration of performance rating plans by each department to determine compliance with the requirements of this Act and may revoke its approval of such plan and prescribe one of the Commission's own choosing.

Since the Civil Service Commission is given the responsibility under the Act for inspection of the administration of rating systems, it cannot abdicate this responsibility by an administrative agreement. Yet any inspection worthy of the name would grant the Commission's representatives access to security information regarding the Central Intelligence Agency operations which is normally never released

outside the Agency and much of which is tightly compartmented inside the Agency. The CIA performance rating plan utilizes forms which are classified because they specify comment as to performance of duties which are highly sensitive in nature. It would be inconsistent with our Agency security regulations to permit a free review of these forms when they are filled out. It is for these same security reasons that the Civil Service Commission supported CIA exemption from the Classification Act of 1949, which was granted by the Congress.

Section 7 of the Performance Rating Act provides for the establishment of a board of review, the chairman of which shall be designated by the Civil Service Commission. An employee is entitled under the Act to present material to the board of review either in person or through a designated representative. In order for the designee of the Civil Service Commission or the employee's representative to have access to classified matters on appeal, including work samples and knowledge of the employee's duties, it would be necessary for each such person to have a full CIA clearance which is a time-consuming process extending over a minimum of 90 days. We feel it might be possible to require the Commission to select the board's chairman from within CIA and to require that the employee's representative be similarly selected. However, this latter alternative at least would impair the employee's right of representation of his own choosing. If, on the other hand, a CIA employee is terminated without full access to the review procedures under the Act, the Government might be liable for damages in an appropriate action brought in the Court of Claims.

While it is the policy of the Agency not to seek exemption from statutes of general application if a reasonable means for complying with their provisions can be found within the bounds of security, we feel that the facts outlined above are of such a nature as to warrant consideration for CIA exemption from the Act. It is noted that eleven categories of agencies or employees are already exempt from the Act, including the Foreign Service of the United States. For the reasons outlined above, therefore, the approval of the

Bureau of the Budget is requested for the Central Intelligence Agency to seek Congressional approval for exemption from the Performance Rating Act of 1950, and authorization is requested to forward the attached letter to the Chairman of the Senate and House Committees on Post Office and Civil Service.

Sincerely yours,

**Walter L. Florsheimer
Legislative Counsel**

Attachment

OGC:WLP/blc (31 Mar. 54)
Orig. & 3 - Addressee
1 - AD/Personnel
1 - Deputy Director/Admin.
2 - OGC